

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TROY KRACKE)	
Claimant)	
VS.)	
)	Docket Nos. 230,783 & 237,380
TYLER CORPORATION/OVERHEAD DOOR CO.)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY and)	
KANSAS BUILDING INDUSTRY WCF)	
Insurance Carriers)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent and one of its insurance carriers, Travelers Insurance Company (Travelers), appealed the February 22, 2000 Award and the March 1, 2000 Nunc Pro Tunc entered by Administrative Law Judge Nelsonna Potts Barnes. The Appeals Board heard oral argument on July 14, 2000.

APPEARANCES

Jan L. Fisher of Topeka, Kansas, appeared on behalf of claimant. William L. Townsley III of Wichita, Kansas, appeared on behalf of respondent and Travelers. Jeffery R. Brewer of Wichita, Kansas, appeared on behalf of respondent and Kansas Building Industry Workers Compensation Fund. Christopher J. McCurdy of Wichita, Kansas, appeared on behalf of the Kansas Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award, except that the date of accident in paragraph 1 of Stipulations - Docket No. 230,783 should be corrected to read "August 27, 1992" rather than 1997.

ISSUES

This appeal involves two docketed claims that were consolidated for trial. Docket No. 230,783 involves a specific accidental injury that occurred on August 27, 1992. Docket No. 237,380 involves an alleged series of accidents and aggravations that occurred beginning February 1993 when claimant returned to work following his initial injury and continued each and every working day thereafter through claimant's last day of work on January 3, 1997. The parties do not dispute the compensability of claimant's injuries, but there is a dispute concerning the nature and extent of the injuries and what date of accident should apply to any worsening of claimant's condition following his return to work. The Kansas Business Industry Workers Compensation Fund (KBIWCF) is not a party to Docket No. 230,783. The Kansas Workers Compensation Fund (Fund) is not a party to Docket No. 237,380.

The Administrative Law Judge found that except for the vasospastic disorder in claimant's left arm, all of the injuries and resulting disability were the natural and probable consequence of the original August 27, 1992 accident.¹ Travelers disagrees, contending that except for the fracture to claimant's left wrist all of claimant's other injuries were caused or aggravated by his return to work and, therefore, are the responsibility of respondent's subsequent insurance carrier KBIWCF. Claimant, KBIWCF and the Fund ask for the ALJ's Award and Nunc Pro Tunc to be affirmed. In its simplest sense, this appeal is a dispute between respondent's two insurance carriers as to which will be responsible for claimant's general body disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant worked for respondent as an installer, primarily of commercial garage doors, sectional doors, rolling steel doors, dock seals and dock levelers. His job involved hand intensive, heavy physical labor. Claimant would regularly lift in excess of 50 pounds and up to 200 pounds. He was required to use hand tools, including vibratory tools and often worked overhead or in awkward positions.

On August 27, 1992, while installing a rolling steel door on a barn, claimant fell head first from a ladder approximately six feet to the concrete surface below striking his head, left shoulder and arm. Claimant was immediately taken to the St. Joseph Hospital Emergency Room where he complained of problems with his left shoulder, left arm and neck. He was treated by Dr. Bernard T. Poole who performed surgery to repair the compound, comminuted intraarticular fracture of the left distal radius. In January of 1993, Dr. Poole performed a second surgery to remove bone spurs and reduce tendon impingement. Claimant was off work receiving medical care, including physical therapy, for an extended period of time. Although claimant had ongoing problems with his left shoulder

¹ See Frazier v. Mid-West Painting, Inc., 268 Kan. 353, 995 P.2d 855 (2000).

and neck, Dr. Poole's treatment was confined to the left wrist and arm. On March 17, 1993, Dr. Poole released claimant to return to work with the restriction of no hammering with the left hand.

Although claimant was released with restrictions, no light duty work was available and so claimant returned to his regular job. Despite ongoing problems with his left hand, wrist, arm and shoulder and his neck, claimant continued to work. He took over-the-counter pain medication and attempted to change the way he did his job to limit his pain and discomfort. Claimant returned to Dr. Poole on several occasions following his return to work. Dr. Poole conducted additional testing and eventually decided claimant needed surgery for carpal tunnel syndrome (CTS). At this point, claimant's care was transferred to Dr. Mark Melhorn who first saw claimant in February 1995. Although the correspondence to Dr. Melhorn from the insurance carrier indicates that claimant was being referred for evaluation and treatment of only the wrist, claimant related to Dr. Melhorn that he was also having problems with his left hand, arm, shoulder and neck. Dr. Melhorn's notes also indicate that claimant had not been provided with any previous treatment to the neck or shoulder. Dr. Melhorn performed carpal tunnel release surgery on the left wrist. He also obtained x-rays of the left wrist, shoulder and cervical spine, prescribed physical therapy, home exercises and anti-inflammatory medication. Dr. Melhorn released claimant on May 9, 1995 to "regular work as tolerated", but continued to treat claimant until November 30, 1995.

Because of ongoing symptoms claimant was seen by Dr. Harry Morris in February 1996. Claimant described his left hand, wrist, arm, shoulder and neck problems at that time as essentially the same types of symptoms that he had been experiencing since his accidental fall from the ladder. He also said his work activity made his symptoms worse. Claimant was also provided treatment by Dr. Kettermann, Dr. Odulio and Dr. Blaty. In addition he was evaluated by neuropsychologist Dr. Mitchel Woltersdorf. Claimant's condition, however, failed to improve. Claimant was given restrictions by Dr. Morris and Dr. Kettermann which he took to work but, as before, respondent either could not or would not accommodate the restrictions. Claimant did cut back on overtime the last six months he worked. Eventually claimant decided to take a medical leave of absence. He last worked on January 3, 1997.

The record contains expert testimony from three physicians, all orthopedic surgeons. The deposition of orthopedic surgeon Bernard T. Poole, M.D., was taken June 1, 1999 on behalf of Travelers. Dr. Poole testified that when he examined claimant at the hospital on August 27, 1992 he found claimant to have a mild concussion, a small penetrating wound with a very comminuted fracture dislocation of his left wrist. Following surgery and after the fracture had healed, claimant developed symptoms on the back of his wrist suggestive of a tendon impingement. Dr. Poole again performed surgery and found two small spurs on the healed bone, which were removed. As stated previously, he initially released claimant to return to work in March 1993 with only a restriction against hammering with his left hand. Claimant returned in May 1994 with symptoms suggestive

of CTS. Claimant had an electromyography/nerve conduction test (EMG/NCT) in 1992 that showed a mild degree of median neuropathy, but which was not typical of CTS. Dr. Poole ordered a repeat EMG/NCT which again showed mild distal medial nerve dysfunction which had not changed since the 1992 evaluation. Dr. Poole did not offer an opinion to a reasonable degree of medical probability concerning the cause of that nerve dysfunction. Dr. Poole issued a report on October 13, 1994 in which he said claimant was at maximum medical improvement (MMI) with a 15 percent permanent partial disability to the left arm. He further opined that "it was definitely possible that in the future increasing or disabling arthrosis of the inferior radial ulnar joint or radial carpal joint could necessitate further treatment with, of course, a further increase in disability."² Dr. Poole could not explain why he had earlier given an opinion that claimant had a 20 percent permanent partial disability to the left upper extremity.

In November 1994 claimant again returned to Dr. Poole and reported an increase in symptoms. A repeat EMG/NCT was ordered for the left forearm. It showed an increase in distal median nerve dysfunction and also a suggestion of cervical (C7) dysfunction. Dr. Poole recommended claimant undergo a left carpal tunnel release surgery. That surgery was later performed on March 13, 1995 by Dr. Mark Melhorn. After Dr. Poole was advised that carpal tunnel release surgery had been performed he gave an additional 5 percent permanent partial disability. When asked whether the carpal tunnel syndrome condition was related to the August 1992 accident, Dr. Poole answered "I think there is an obvious and direct connection between the two."³ But when asked whether the worsening of the symptoms was aggravated or accelerated by claimant's subsequent use of vibratory tools or otherwise he replied "I can't say that. All I can say is that a patient with these kind of symptoms is best advised to avoid such tool use as it is likely to aggravate the condition."⁴ Dr. Poole concurred with Dr. Morris' advice that claimant avoid vibrating or pneumatic tools and repetitive hammering and that a sensible weight restriction would be about 30 pounds.

Claimant returned to Dr. Poole in March 1997 with a recurrence of tingling of the same four fingers of the left hand and continued to complain of pain in his upper arm, shoulder and neck. Due to the complaints of neck, shoulder and arm pain, Dr. Poole ordered x-rays taken in March 1997 that showed mild cervical spondylosis which is more marked at the C5-6 level with mild changes at the C4-5 and C6-7 levels. As to whether he examined claimant's shoulder at the March 1997 office visit, Dr. Poole responded "I cannot tell you anything about this patient's shoulder since there is nothing in the record about it."⁵

² Poole Depo. at 9.

³ Poole Depo. at 11.

⁴ Poole Depo. at 14.

⁵ Poole Depo. at 33.

Dr. Poole attributed claimant's neck complaints to cervical spondylosis. Dr. Poole also said that in January of 1995 claimant showed no evidence of a vasospastic disorder.

The deposition of board certified orthopedic surgeon Mark Melhorn, M.D., was taken May 27, 1999 on behalf of Travelers. Dr. Melhorn's practice in Wichita, Kansas is known as The Hand Center and he represents that his specialty is orthopedics of the hand and upper extremity. He includes upper extremity problems associated with conditions of the cervical spine as being within his specialty area. Dr. Melhorn first saw claimant on February 9, 1995 from a referral by respondent's insurance carrier "for evaluation and treatment for left wrist pain."⁶ He obtained x-rays and made a diagnosis of "a Colle's fracture and resultant carpal tunnel and ulnar impaction and a painful left shoulder" and recommended "carpal tunnel surgery first and then, if symptoms persist with regard to the bone component wrist, surgery for the wrist, itself."⁷ Dr. Melhorn recommended to the insurance carrier that claimant return to Dr. Poole for the carpal tunnel release surgery.⁸ But the carpal tunnel release surgery on the left was performed by Dr. Melhorn on March 13, 1995. In May 1995 he released claimant to "regular work as tolerated" and rated claimant's impairment at 7.05 percent to the left forearm for the CTS condition. In October 1995, due to ongoing hand and shoulder complaints, Dr. Melhorn suggested claimant consider cutting back to an 8 hour workday and continue using wrist splints bilaterally. Thereafter, Dr. Melhorn made an additional diagnosis of vasospastic disease bilaterally and a vascular insufficiency pattern on the left for which he recommended claimant avoid coffee, caffeine, nicotine and chocolate and limit his exposure to cold and wear gloves to keep the hand warm. Based upon this new diagnosis, Dr. Melhorn modified claimant's restrictions to add that he limit his exposure to cold and limit use of power and vibratory tools. Dr. Melhorn last saw claimant on November 30, 1995.

Because claimant continued working until January 3, 1997, Dr. Melhorn was asked to assume that the claimant performed certain tasks and "assuming that subsequent physicians identified that additional diagnosis of chronic cervical sprain or rotator cuff tendinitis in addition to the diagnosis that you've identified, do you believe it was probable that the work-related activities caused or contributed to the additional diagnoses?" Dr. Melhorn answered: "I believe that both work and nonwork activities after the last date that we saw him could have contributed to additional musculoskeletal complaints."⁹ As to whether the CTS condition was aggravated by claimant's subsequent work activities, Dr. Melhorn was again asked to make certain assumptions about what those subsequent work tasks included and then was asked "Doctor, if the functional impairment was higher

⁶ Melhorn Depo. Exh. 2, 1/25/95 letter to Dr. Melhorn by Lisa Tejeda of Travelers Ins.

⁷ Melhorn Depo. Exh 2, 2/9/95 letter to Troy Kracke by Dr. Melhorn.

⁸ Melhorn Depo. Exh. 2, 2/9/95 letter to Dr. Poole by Dr. Melhorn.

⁹ Melhorn Depo. at 15-16.

for the same diagnosis following the additional two years of work, do you believe that those work activities could have aggravated or accelerated the underlying condition which was the basis for your rating?" To which Dr. Melhorn answered: "I would need to look at how the impairment was done. I'd need to look at how the guides were applied. I'd need to decide whether or not the guides were applied correctly, appropriately and in a similar pattern; and assuming all of that was true, then if there was an increase, it's possible that that increase could be attributable in part to work activities."¹⁰

Based upon claimant's history of having fallen on his left shoulder, hand and forehead, Dr. Melhorn opined that the fall could have caused rotator cuff problems and/or cervical sprain or strain, including irritation to the C7 cervical nerve root as suggested by the November 1994 EMG/NCT. Nevertheless, Dr. Melhorn's opinion as of when he last saw claimant in 1995 was that the permanent impairment was to the level of the forearm. He conceded that further diagnostic testing or clinical examination directed toward the shoulder and cervical complaints could alter his opinion. Dr. Melhorn further conceded that claimant's history of neck, arm and shoulder pain made worse with activity "may indicate that he has some nerve irritation in the cervical spine" consistent with the earlier finding from the 1994 EMG/NCT. Although he did not specifically relate the bilateral vasospastic disease or the vascular deficiency in the left upper extremity to either the 1992 accident or the subsequent work activities, he did say that since the vasospastic disease was bilateral, it would be difficult to relate it to the specific 1992 accident. As to the causation of the CTS condition, Dr. Melhorn stated "I believe that the original fracture caused a permanent aggravation resulting in the development of carpal tunnel, yes."¹¹

The deposition of board certified orthopedic surgeon Edward J. Prostic, M.D., was taken on January 5, 1999 and again on April 16, 1999, both on behalf of claimant. Dr. Prostic's opinions were based upon his February 24, 1998 examination and x-rays of claimant and a review of the medical treatment records. He diagnosed a healed Colles' fracture of the left wrist, surgically treated carpal tunnel syndrome and impingement of extensor tendons, osteoarthritis of the left wrist, vasospastic disorder, chronic cervical sprain and strain with past cervical radiculopathy, and rotator cuff disease at the left shoulder. He found claimant was at MMI. He rated claimant's functional impairment at 30 percent to the body as a whole consisting of 5 to 10 percent impairment to the arm for the vasospastic disease which translates to 3 to 6 percent of the body, 10 percent to the body as a whole for cervical radiculopathy syndrome, 12 percent of the arm at the shoulder for rotator cuff syndrome, 20 percent of the arm for reduced grip strength, 5 to 10 percent to the hand for loss of sensation, 15 to 20 percent at the forearm for loss of motion at the wrist and fingers. Dr. Prostic believed all of the conditions were related to the August 27, 1992 accident other than the vasospastic disorder which he attributed to

¹⁰ Melhorn Depo. at 16-17.

¹¹ Melhorn Depo. at 38.

claimant's subsequent return to work. He believed claimant should avoid work in cold temperatures and handling cold objects. He further recommended restrictions of no repetitious use of the left hand, no left-handed lifting or gripping greater than 20 pounds occasionally, avoid activities that require more than minimal rotation of the left forearm, and avoid more than minimal use of the left hand at or above shoulder height. Of these, only the restriction against work in cold environment was solely due to the vasospastic condition. Of the total 30 percent impairment of function rating to the body as a whole, Dr. Prostic attributed 5 to 10 percent of the upper extremity, which translates to 3 to 6 percent of the body, to the vasospastic disease. Subtracting this from the total functional impairment results in a 26 percent impairment rating Dr. Prostic attributes to the original August 27, 1992 accident.

Based upon the record as a whole, the Board concludes the ALJ's Award, as corrected by the Nunc Pro Tunc, should be modified to limit claimant's permanent partial disability in Docket No. 230,783 to his percentage of functional impairment while he was continuing to work and earn a comparable wage.¹² Thereafter, for the period beginning January 4, 1997 when claimant ceased working for respondent, the presumption of no work disability is rebutted and the award should be modified to a work disability.¹³ As to Docket No. 237,380 the ALJ's Award should be affirmed. The Board agrees with the ALJ that except for the vasospastic disorder, all of claimant's other injuries were the direct and natural result of his August 27, 1992 accident. Consequently, claimant's ultimate work disability is likewise attributable to that accident date. Only the disability based upon the percentage of functional impairment for the vasospastic disorder is attributable to a series of accidents ending January 3, 1997. The Kansas Workers Compensation Fund has no liability for either accident. The Board adopts the findings and conclusions set forth by the ALJ in her Award and Nunc Pro Tunc to the extent they are not inconsistent with the findings and conclusions contained herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 22, 2000 Award in Docket No. 230,783 entered by Administrative Law Judge Nelsonna Potts Barnes, as corrected by the March 1, 2000 Nunc Pro Tunc, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Troy Kracke, and against the respondent, Tyler Corporation/Overhead Door Co., and its insurance carrier, Travelers Insurance Company, for an accidental injury which occurred

¹² K.S.A. 1992 Supp. 44-510e(a).

¹³ Lee v. Boeing Co., 21 Kan. App. 2d 365, 899 P.2d 516 (1995).

August 27, 1992. Based upon an average weekly wage of \$581.13, claimant is entitled to 49 weeks of temporary total disability compensation at the rate of \$299.00 per week or \$14,651.00, followed by 178.14 weeks of permanent partial disability compensation at the rate of \$100.73 per week or \$17,944.04, for a 26% functional impairment through January 3, 1997, followed by 187.86 weeks at the rate of \$236.34 per week or \$44,398.83, for a 61% work disability, making a total award of \$76,993.87, which is ordered paid in one lump sum less any amounts previously paid.

The Award in Docket No. 237,380 is affirmed.

The Board adopts the remaining orders contained in the Award and the Nunc Pro Tunc to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
William L. Townsley III, Wichita, KS
Jeffery R. Brewer, Wichita, KS
Christopher J. McCurdy, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director